Hudna

(1,037 words)

, abstract noun from the root *h.d.n.* with the sense of "calm", "peace". Other terms which have the same meaning are *muwādaʿa* , *muṣālaḥa* , *musālama* , and *mutāraka* , the general meaning of which in Islamic law is the abstention of the parties concerned from hostilities against each other. The process of entering into a peace agreement with the enemy is called *muhādana* or *muwādaʿa*, but the instrument of peace is hudna (peace agreement).

In Islamic legal theory, normal relations between the *dār al-Islām* [*q.v.*] and the *dār al-ḥarb* [*q.v.*] were not peaceful, and there existed a state of latent or open hostilities which jurists nowadays call a state of war. Short intervals of peace were, however, permitted by divine legislation (Ḳurʾān VIII, 63; IX, 1 and others) and the Muslims could establish peaceful relationships with non-Muslims, individually and collectively, if such a peace was not inconsistent with the interests of the Muslims. On ¶ the individual level, the *ḥarbī* (person from the *dār al-ḥarb*) could enter the *dār al-Islām* unmolested, provided he obtained an *amān* ([*q.v.*] see also MUSTA'MIN) beforehand from any believer, whether in an official or an unofficial capacity. But as a territorial group, the unbelievers could obtain such a temporary status only by an official act, either directly or indirectly granted by the *Imām* , which conferred upon the inhabitants of the territory whose ruler entered into a peace agreement with the Muslims the benefits of the *amān* obtained by a single individual. It is clear that the *muhādana* or *muwādaʿa* is, as Kāsāni observes, a form of *amān*. But the *amān* is a temporary peace given to an individual *ḥarbi* , although his country is still in a state of war with Islam, while the *muhādana* is a temporary peace extended to a certain town or a country (including its people) by an official act. Hudna in Islamic law is thus equivalent to "international treaty" in modern

terminology. Its object is to suspend the legal effects of hostilities and to provide the prerequisite conditions of peace between Muslims and non-Muslims, without the latter's territory becoming part of the *dār al-Islām*.

The Ḳur'ān provided for the Muslims not only the possibility of entering into a peace agreement with the enemy, but also the obligation to observe the terms of the agreement to the end of its specified period (Ḳur'an IX, 4; XVI, 93), once the agreement was accepted by the Muslims. This is the principle *pacta sunt servanda*, stressed both in divine legislation and juridical writings. Thus hudna in Islamic law was established by practice (*i.e.*, agreement and consent of the parties concerned) and validated by authoritative sources. The treaty-making power rested in the hands of the *Imām*, but this power might be delegated to commanders in the field who were empowered to negotiate with the enemy if the latter was willing to come to terms with Islam. However, the *Imām* reserved the right to repudiate the treaty if it proved to be inconsistent with the interests of the Muslims. The *Imām's* approval or ratification was, therefore, necessary to make the treaty binding upon the Muslim community. Even after the treaty was ratified, the *Imām* had the power to terminate the treaty by denunciation (*nabdh*), provided a prior notice was sent to the enemy to that effect. The Ḥudaybiya treaty, concluded by the Prophet Muḥammad with the unbelievers of Mecca in 6/628, provided a precedent for subsequent treaties which the Prophet's successors made with non-Muslims. Although this treaty was violated within three years from the time it was concluded, most jurists concur that the maximum period of peace with the enemy should not exceed ten years, since it was originally agreed that the Ḥudaybiya treaty should last ten years.

The Prophet and his successors concluded treaties with the People of the Book [see AHL AL-KITĀB], but these treaties were not temporary in nature, since both the people and the territory were incorporated in the *dār al-Islām* and the *ahl al-kitāb* became subjects of the *Imām*. Since these were not required to become Muslims, they were regarded as protected members of the state and called *dhimmīs* [*q.v.*]. The treaties with *ahl al-kitāb* were, accordingly, not strictly international treaties, but covenants (*ʿahd*) or a form of constitutional charters which fall under Islamic constitutional law, not under the Islamic law of nations (for a model text of such a charter, see Shāfiʿī, *al-Umm* , iv, 118-9).

An examination of the treaties concluded by the ¶ Prophet and his successors leads us to establish certain general characteristics which may be summed up as follows: (1) the treaties were, on the whole, brief and general, and no attempt was made to supply details as to their applications; (2) the preamble consisted of the *basmala* ("in the name of Allāh"), the names of the parties and their representatives, and their titles; (3) treaties were temporary agreements, the duration of which was specified, except those with *ahl al-kitāb*, although it was understood that a treaty might be renewed; (4) the provisions were stated in written form and most jurists are agreed that the text of the treaty must be written and signed by the parties and often the

names of the witnesses were added at the end of the text. The writing as well as the signing and the dating of the treaty are not, strictly speaking, legal prerequisites; but Ḥanafī jurists insisted that treaties, in order to be binding, must be written and duly signed.

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Bibliography

Abū Yūsuf, *Kitāb al-Kharādj*, Cairo 1352, 207-14

Shaybānī, *Siyar* (a portion of *Kitāb al-Aṣl*), trans, by M. Khadduri as *Islamic Law of Nations: Shaybānī's Siyar*, Baltimore 1966, Chapter 5

Sarakhsī. *Sharḥ al-Siyar al-kabīr*, Ḥaydarābād 1336, iv, 2-86

Shāfiʿī, *Kitāb al-Umm*, Cairo 1322, iv, 103-25

Ṭabarī, *Kitāb Ikhtilāf al-fuḳahāʾ*: *Kitāb al-Djihād*, etc., ed. J. Schacht, Leiden 1933, 14-21

Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, Cairo 1328/1910, vii, 108-10

Ibn Ḳudāma, *al-Mughnī*, ed. Rashīd Riḍā, Cairo 1367, viii, 458-67

M. Hamidullah, *Muslim conduct of state* [3], Lahore 1953, chapter 25

Hans Kruse, *Al-Shaybānī on international instruments*, in *JPakHS*, *i* (1953), 90-100

M. Khadduri, *Law of war and peace in Islam*, Baltimore 1955, chapter 28. See also ʿAHD and ṢULḤ.

Cite this page

Khadduri, M.. "Hudna." *Encyclopaedia of Islam, Second Edition*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. Brill Online, 2016. Reference. University of Texas at Austin. 29 April 2016 <http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/hudna-SIM_2932>
First appeared online: 2012
First Print Edition: isbn: 9789004161214, 1960-2007